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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,285	08/28/2003	Joseph R. Zelinski	1063	6688
7590	12/13/2005		EXAMINER	
Donald J. Ersler 725 Garvens Avenue Brookfield, WI 53005			SAN MARTIN, EDGARDO	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b> 10/650,285	<b>Applicant(s)</b> ZELINSKI, JOSEPH R.	
	<b>Examiner</b> Edgardo San Martin	<b>Art Unit</b> 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-19 and 21-28 is/are rejected.
- 7) ☒ Claim(s) 10, 20 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/15/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3, 4, 6, 11, 22, 24, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Herold (US 5,949,035).

With respect to claims 1 and 22, Herold teaches a method of forming a muffler with a baffle (Figs.1 and 2), comprising the steps of forming a baffle (Figs.1 and 2, Item 18) having at least two legs (Fig.2, Items 18, 20 and 22), adjacent legs of the at least two legs being oriented at an acute angle to each other (Fig.2); providing a container that is sized to receive the baffle (Figs.1 and 2, Items 12 and 14); forming at least one inlet (Fig.1, Item 15) and at least one outlet (Fig.1, item 17) in the container; securing the baffle to the container; and covering each end of the container (Figs.1 and 2)(Col.5, Lines 34 – 56).

With respect to claims 3, 4, 24 and 25, Herold teaches forming at least one first exhaust opening (Fig.2, Item 166) through a first leg (Fig.2, Item 18) and forming at least one second exhaust opening (Fig.2, item 170) through a second leg of the baffle (Fig.2, Item 20), and further comprising the step of forming at least one third exhaust opening (Fig.2, Item 168) through a third leg of the baffle (Fig.2, Item 22)(Col.9, Lines 4 – 7).

With respect to claims 6 and 27, Herold teaches further comprising the step of forming least one inlet opening (Fig.1, Item 15) through the container, attaching at least one inlet tube (Figs.1 and 2, Item 86) to the at least one inlet opening, forming at least one outlet opening (Fig.1, Item 17) through the container, attaching at least one outlet tube (Figs.1 and 2, Item 88) to the at least one outlet opening (Col.7, Lines 16 – 24).

With respect to claims 11 and 28, Herold teaches further comprising the step of forming a web area (Fig.2, Items 138 and 140; Col.8, Lines 34 – 36) between adjacent legs of the at least two legs.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 5, 7 – 9, 12 – 19, 21, 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herold (US 5,949,035) in view of Malkiewicz (US 3,724,591).

With respect to claims 2, 12 and 23, Herold teaches the limitations discussed in a previous rejection, but fail to disclose further comprising the step of covering each end of the container by attaching an end cap.

On the other hand, Malkiewicz teaches a method of forming a muffler with a baffle, comprising the steps of forming a baffle (Fig.3, Item 27), providing a container

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(Fig.1, item 3) having a tubular construction, the container being sized to receive the baffle (Fig.1 and 2); forming at least one inlet and at least one outlet (Fig.1, items 15 and 17) in the container; securing the baffle to the container; and attaching an end cap (Fig.1, Item 13) to each end of the container.

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Malkiewicz muffler configuration with the Herold design because the Malkiewicz configuration would permit the construction of the whole muffler (container and baffle) to be in the form of a one-piece configuration; by employing only a single sheet of appropriate building material the cost of production and time of assembly would be less, improving the method of forming the muffler.

With respect to claims 5, 15 and 26, the Examiner considers that it would have been an obvious matter of design choice to form at least one fourth exhaust opening through a third or fourth leg of the baffle, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to claims 7, 8, 17 and 18, Malkiewicz teaches inserting the at least one inlet tube (Fig.1, Item 16) through the baffle and inserting the at least one outlet tube (Fig.1, item 18) through the baffle, or inserting the at least one inlet tube partially through the baffle and inserting the at least one outlet tube through the baffle (Fig.1)(Col.2, Lines 45 – 56).

With respect to claims 9 and 19, the Examiner considers that it is well known in the art of acoustics in muffler applications to insert at least one baffle tube through at

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least two of the at least two legs and inserting at least one resonator tube in at least one of the at least two legs, in order to tune the muffler to attenuate a certain frequency range. The Examiner considers that any person with ordinary skill in the art would acknowledge that in a muffler with plural chambers and passages, a way of tuning the muffler is by altering the manner in which the chambers communicate with each other; these is a mere design choice to comply with a particular design parameter, this limitation would not depart from the scope of Herold and Malkiewicz teachings.

With respect to claims 13 and 14, Herold teaches forming at least one first exhaust opening (Fig.2, Item 166) through a first leg (Fig.2, Item 18) and forming at least one second exhaust opening (Fig.2, item 170) through a second leg of the baffle (Fig.2, Item 20), and further comprising the step of forming at least one third exhaust opening (Fig.2, Item 168) through a third leg of the baffle (Fig.2, Item 22)(Col.9, Lines 4 – 7).

With respect to claim 16, Herold teaches further comprising the step of forming least one inlet opening (Fig.1, Item 15) through the container, attaching at least one inlet tube (Figs.1 and 2, Item 86) to the at least one inlet opening, forming at least one outlet opening (Fig.1, Item 17) through the container, attaching at least one outlet tube (Figs.1 and 2, Item 88) to the at least one outlet opening (Col.7, Lines 16 – 24).

With respect to claim 21, Herold teaches further comprising the step of forming a web area (Fig.2, Items 138 and 140; Col.8, Lines 34 – 36) between adjacent legs of the at least two legs.

***Allowable Subject Matter***

3. Claims 10, 20 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

4. The attached hereto PTO Form 892 lists prior art made of record that the Examiner considered it pertinent to applicant's disclosure.

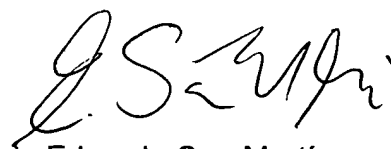
***Contact Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Edgardo San Martín', is positioned above the printed name and title.

Edgardo San Martín  
Primary Examiner  
Art Unit 2837  
Class 181  
December 11, 2005